

Similarly, there are over 20 alternatives available to consumers of BT local measured service. Customers can obtain alternative local measured service at prices equal to, or in most cases below, BT's rates for the same service. 90/ This is true regardless of whether these competitors rely on the BT network to carry part of the call -- at cost-based rates determined by OFTEL -- or use their own facilities exclusively. Indeed, the combined effect of regulatory and competitive forces has led to a decrease in local measured calling charges of over 43 percent since 1984. 91/

Thus, UK customers and service providers have an increasing number of sources from which to choose when seeking local exchange line or local measured service. Unlike the situation in the US where local services have been largely closed to competition, the UK local market has a wide variety of established entities offering alternatives to BT service at reasonable prices.

c. The UK Intercity Market is Fully Open to US Firms

The UK issues domestic PTO licenses -- an authorization to operate a facilities-based network -- without regard to the nationality of the applicant or its affiliate. Several UK companies, including the UK affiliates of AT&T and Sprint (now GlobalOne), have domestic UK PTO licenses. National facilities-based competitors are now able to compete for the intercity telecommunications business

90/ BT's evening and night time rate in 1995 of 1.6 pence per minute was the same as MFS' rate of 1.6, and higher than Nynex's rate of 1.2.

91/ Revenues from Telephony Soar, UK Telecommunications Survey Supplement, Financial Times, March 21, 1996, at II.

of almost 100 percent of BT's UK subscribers, either directly or through interconnection with BT's network.

Mercury operates an all-digital UK trunk network of over 12,000 km, including 8,000 km of optical fiber cable and 4,300 km of microwave links. 92/ To feed customers into its long distance network, Mercury has installed optical fiber cable networks in over 42 UK cities and towns, including a 1300 km network in central London. 93/ Approximately 98 percent of all UK exchange lines are located in areas where Mercury is able to provide long distance service. 94/ The proposed merger of Mercury with Bell Cablemedia, Nynex CableComms and Videotron to form Cable & Wireless Communications will give the resulting firm's long distance service direct access to approximately 6 million homes in those three cable TV companies' franchise areas, of which 2.8 million homes are already passed by cable offering both video and telephony. 95/

Energis, a subsidiary of the National Grid Company ("NGC"), has built an optical fiber network taking advantage of pre-existing infrastructure and rights-

92/ Cable and Wireless plc, SEC Form 20-F at 8 (Fiscal Year Ending March 31, 1996).

93/ Id. at 29.

94/ Id. at 28.

95/ North American-owned Cable Groups in UK Telecoms Deal, Financial Times, Oct. 23, 1996, at 1; see Cable & Wireless, Bell Canada Units to Merge with Nynex's U.K. Cable Firm, Wall Street Journal, Oct. 23, 1996 at A3, A8.

of-way of the electricity companies that own NGC. 96/ As of November 1995, Energis had already built 4,100 km of its national trunk network. 97/ Although it was "able to construct a nationwide telecommunications network very quickly -- in just 18 months," 98/ Energis planned eventually to extend its network to 7,000 km, covering 17 cities and potentially serving 70 percent of the population. 99/ By March 1996 Energis had invested £423 million and already had 7,000 customers. 100/

BR Telecommunication Limited ("BRT"), the telecommunications arm of the British Railways, was purchased in late 1995 by Racal Electronics plc, which renamed it Racal-BR Telecommunications Limited. 101/ BRT's network had 11,000 km of trunk cable (including 4,000 km of fiber optic cable), 16,000 km of distribution cable, and 269 switches; but only a fraction of the network's capacity

96/ Optical fiber cables are wrapped around existing earth wires that connect the NGC's national network of pylons.

97/ Energis Core Press Information, Nov. 1995.

98/ The National Grid Company plc, Annual Report and Accounts (1994/1995) at 7 ("Annual Report and Accounts (1994/95)").

99/ See Pylon the Pressure, Network, March 1995; see also, UK: Make or Break, Energis Electrical Review, Sept. 5, 1995.

100/ The National Grid Company plc, Offering Circular (June 7, 1996) at 14. Energis' business customers "include large organizations such as BBC, Reuters, Mothercare and Pearl Assurance, as well as many small and medium-sized companies." Annual Report and Accounts (1994/95) at 14.

101/ Racal Electronics plc, News Release 95/168, Dec. 21, 1995.

was being used by BRT's railway and other corporate customers. 102/ BRT's facilities reach into many UK communities by virtue of using the same rights-of-way as the British rail system. BRT already provides dark fiber to other PTOs and, as part of Racal, could become a ubiquitous residential and business service provider of intercity services. 103/

In late 1994, AT&T's wholly owned UK subsidiary received its PTO license for the domestic UK market. By early 1996, AT&T had already invested "tens of millions of dollars" assembling a nationwide "intelligent network," installing large AT&T 5ESS switches in London, Edinburgh, and Manchester and leasing high capacity intercity circuits. AT&T has also signed interconnection agreements with BT, Mercury, COLT, and others, and now offers large and medium-sized businesses virtual private network and other advanced telecommunications services. 104/ At that time, AT&T indicated its intention to offer a full range of services to large international and business customers, including international routing via the AT&T-Unisource venture, and then to

102/ Racal Electronics News Release, Proposed £132.75 Million Acquisition of BR Telecommunications Limited, Dec. 5, 1995; Racal, Financial Times, Dec. 6, 1995 at 12.

103/ Id. Racal Network Services, which received a PTO license in 1994, has 300,000 users of its voice, data, and value-added messaging services and operates the UK government's data network serving 40 government departments. Id.

104/ AT&T Thirsts for Telecom Cream, Financial Times (London ed.), Jan. 24, 1996, at 9.

expand into other UK services, including toll-free service, video conferencing, and long distance service for residential and small business customers. 105/ An AT&T spokesman stated that the company intends "fully national coverage" in the UK and plans to achieve a \$1B annual turnover there by the year 2000 -- a five percent share of the total UK market. 106/ AT&T's interconnection agreement with COLT for access to businesses in COLT's large service area in London enables AT&T to bypass BT there. 107/ One commentator has described AT&T's UK strategy as "sensible and solid, . . . likely to win confidence in the business community and make AT&T an enduring player in the UK market." 108/

In addition to facilities-based national trunk providers, resellers provide switched national calling services. Various cable companies are resellers of others' national calling services through the exchange of traffic between their

105/ Id.; AT&T to Challenge UK Telecoms Groups, Financial Times (London ed.), Jan. 24, 1996, at 1; Big AT&T Makes a Debonair Debut in U.K., Wall Street Journal Europe, Jan. 23, 1996, at 4.

106/ AT&T Projects \$1 Billion in Revenue in U.K. Market, Wall Street Journal Europe, Jan. 24, 1996, at 3.

107/ See AT&T and COLT Form Alliance, Financial Times (London ed.), Jan. 17, 1996, at 30. AT&T's ability to offer flexible and customized discounts to its UK customers gives it a significant advantage over BT. OFTEL does not allow BT to offer customized or volume-based discounts or to offer services in the form of contract or Tariff 12 type packages as AT&T can and does provide to its customers.

108/ Eden Zoller, A Giant Enters on Tiptoes, UK Telecommunications Market Survey Supplement, Financial Times, March 21, 1996, at IV ("A Giant Enters on Tiptoes").

regional networks. UK cable companies are constructing a high capacity optical fiber network in the greater London area, another linking Liverpool, Manchester, Bradford, Leeds, York and Harrogate, and a third in the Midlands, and are expecting to acquire the facilities to link these three and other networks together to provide national service. 109/

Each of these facilities-based or resale networks can be accessed directly or indirectly by subscribers of any UK local telephone service. 110/ As a result of these competitive alternatives, shares of BT's national long distance residential and business services have declined substantially. OFTEL reports that for the period January to March 1996, fixed link PSTN national (as distinguished from local or international) call revenue shares were as follows:

	<u>Business</u>	<u>Residential</u>
BT	73.3%	88.3%
Mercury	20.4%	5.7%
Cable	1.9%	4.8%
Other	4.4%	1.2% <u>111/</u>

109/ Telecomeuropa's New Network Operator Newsletter, Aug. 28, 1995.

110/ Indirect access refers to the use of a 3-digit carrier code or use of a "smart button" to access a long distance provider other than one to which the local telephone operator would otherwise route long distance calls.

111/ OFTEL October Market Information Update, supra note 33, at 14, 16.

Therefore, the lack of de jure restrictions on intercity competition and the market penetration that BT's competitors have already achieved demonstrate that US companies have effective competitive opportunities in the UK's national long distance market.

3. The UK Has an Effective Regulatory Framework

As set forth in the Foreign Carrier Entry Order, another part of the ECO test is whether there is "an effective regulatory framework in the destination country to develop, implement and enforce legal requirements, interconnection arrangements, and other competitive safeguards." 112/ The focus of the Commission's inquiry is on whether there is separation between the foreign regulator and the operator of international facilities-based services, and "whether there are fair and transparent regulatory procedures in the destination market." 113/ The Commission has already found that the UK has an effective regulatory authority that is independent of BT, that employs fair and transparent procedures and to which US carriers may resort in the event of anticompetitive conduct on the part of BT. 114/ In light of this finding and the actions of OFTEL and DTI as described above, it is evident that the UK satisfies this part of the ECO test.

112/ Foreign Carrier Entry Order, 11 FCC Rcd at 3894.

113/ Id.

114/ Sprint Corp., 11 FCC Rcd at 1860; BT North America Inc., 9 FCC Rcd 6851, 6852.

4. Competitive Safeguards Protect Against Anticompetitive Practices

BT's UK operations are governed by a broad array of UK and EC "competitive safeguards" that limit BT's ability to engage in "anticompetitive practices" and "protect[] new entrants against potential abuses of market power." ^{115/} In addition to the comprehensive scheme of interconnection regulation discussed above, ^{116/} BT is subject to all "three" of the other "competitive safeguards" that the Commission has identified as "important" and "critical": "(1) . . . cost-allocation rules to prevent cross-subsidization; (2) timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and (3) protection of carrier and customer proprietary information." ^{117/} Although the Foreign Carrier Entry Order does not require any "competitive safeguards" beyond these three (plus interconnection), there are several additional forms of government protection against potential competitive misconduct by BT -- specifically, various Conditions in BT's Licence (which read much like detailed FCC regulations) and the several UK and EC laws (including some enforced by OFTEL) that deal directly with anticompetitive behavior.

^{115/} Foreign Carrier Entry Order, 11 FCC Rcd at 3894.

^{116/} See supra Section III.C.2.a.

^{117/} Id.

Cost-Allocation Rules. In March 1995, OFTEL and BT agreed to certain modifications to BT's Licence that concern cost accounting. Specifically, OFTEL and BT agreed to new Condition 20B, which prescribes accounting separation for specified BT "regulatory businesses" such as access, network, retail "systems business," and equipment supply. 118/ BT is required to produce and publish separated and audited financial statements for these accounts on both an interim and annual basis. Associated published documents specify the methodology to be used, and BT and OFTEL have agreed to the form and content of the financial statements. Condition 20B also gives OFTEL the power to investigate any alleged subsidy or cross-subsidy of any of the "regulatory businesses" or part thereof and, in the event any unfair subsidy or cross-subsidy is found, to direct BT to remedy this situation. 119/

Disclosure of Technical Information. In 1994, BT and OFTEL agreed to a "Code of Practice" that governs the disclosure of technical information regarding BT's network. Pursuant to the Code of Practice on Network Information Publishing Principles ("NIPP"), BT published a general description of its telephony network structure in April 1994 and has periodically updated that description, most

118/ The regulatory businesses are different from BT's operating divisions and the regulatory accounts are separate from and additional to other accounts that BT is required by law to maintain.

119/ BT also is prevented from discriminating against its competitors and in favor of its own operations in the pricing of interconnection and related network services. See supra Section III.C.2.a.

recently in October 1996. This description identifies the towns where local (host), trunk, and international exchanges are located; identifies all types of stored program control switching systems; includes schedules of the interconnect network interfaces from each type of switching system and the nature of interconnection service provided; identifies each interface by reference to relevant technical specifications, with information on the availability of optional features; and explains call routing principles.

For the use of OFTEL and actual or potential interconnecting operators and as part of its responsibilities under the Code, BT publishes quarterly a NIPP document. These documents list the types and numbering ranges of BT switching systems currently in service within each Local Numbering Area ("LNA"), the specific town locations of each controlling switch, and any planned changes. The quarterly NIPP documents also provide details regarding BT's network plans that will affect interconnection over the next two years. The actual charging structure is set forth in BT's monthly National Charging Information Package which is publicly available to actual and potential interconnecting operators. BT also undertakes to provide upon request more specific information needed by individual operators in order to effect their interconnection to BT's network.

Protection of Proprietary Information. With respect to carrier proprietary information, Condition 41A of BT's Licence provides that BT must enter into confidentiality agreements with any licensed operator with whom BT is discussing the terms and conditions of interconnection. Interconnection agreements

that BT executes with other licensed operators must contain the same confidentiality requirements. Such agreements must contain certain minimum provisions, including provisions on the use of confidential information, the standard of care in protecting information and a requirement to use confidential information solely for the purposes for which it was disclosed. The legal and practical effect of these provisions has been to erect "fire walls" between BT's wholesale and retail businesses, such that information obtained by BT to facilitate interconnection with another licensed operator cannot be used by other divisions of BT for other purposes.

Conditions 38 and 38A of BT's Licence deal with the protection of customer proprietary information in a similar manner. They oblige BT to produce and observe Codes of Practice on the disclosure of customer information by its employees engaged in the Systems (Network) Business (Condition 38) and the Supplemental Services (Value-Added and Data) Business (Condition 38A). The Codes, which have been agreed to by OFTEL, prohibit BT from using such information to obtain an unfair advantage. They state that any information a customer provides to the Systems Business or the Supplemental Services Business must not be disclosed outside that Business without the customer's prior consent.

Except in the course of duty, intentional disclosure of the contents of any BT customer's statement of account specifying the telecommunications services received is a criminal offense under Section 45 of the Telecommunications Act 1984. This prohibition (forbidding disclosure of information such as size of bill, calling

numbers, called numbers, call duration, services used, etc.) applies to both carrier and customer proprietary information.

Other Competition Protections. In addition to the foregoing safeguards, there are several other governmental measures that prevent BT from engaging in anticompetitive conduct, including conduct adversely affecting US companies or their affiliates licensed (or seeking licenses) to operate telecommunications systems in the UK. First, as may not be fully apparent from the earlier references to various Conditions in BT's Licence, that Licence is replete with detailed Conditions that BT must obey or risk Licence enforcement orders and damage suits by injured third parties. 120/ Besides the Conditions relating to interconnection, cost allocation, and confidentiality of carrier and customer proprietary information, supra, there are many other Conditions that control or restrict or affirmatively mandate particular BT practices that affect competition. 121/

Second, under Sections 12-15 of the Telecommunications Act 1984, the Director General of Telecommunications ("DGT") who heads OFTEL may modify (and indeed has modified) BT's Licence to add or amend Conditions to prevent particular anticompetitive practices. Modifications may be made either with BT's

120/ BT Licence Schedule 2 sets out the revocation powers; Sections 16-18 of the Telecommunications Act 1984 confer the requisite enforcement powers. Damage suits are available under Section 18(6).

121/ See the BT Licence contained in Volume Three, Section F of this filing.

consent or once the Monopolies & Mergers Commission ("MMC") has reported that the public interest requires a Licence modification. Since 1984 BT has consented to the majority of modifications proposed by the DGT. 122/

Third, the Fair Trading Act 1973 and the Telecommunications Act 1984 (specifically, Section 50(1) and (2)), as amended, confer upon the DGT and the Director General of Fair Trading ("DGFT"), who heads the Office of Fair Trading ("OFT"), wide powers to control monopoly situations or mergers involving BT. They are empowered to obtain undertakings from BT to change the situation or to eliminate any anticompetitive practice taken by BT to exploit or maintain the situation. Or they may refer the situation to the MMC which will investigate and report back, after which appropriate undertakings by BT may be required. The Secretary of State has powers to prevent or remedy adverse effects of monopoly situations involving BT identified by the MMC. The DGT and DGFT may instigate proceedings in the Restrictive Practices Court if the BT conduct is detrimental to consumers' interests.

122/ BT recently consented to a modification (new Condition 18A) which, unless struck down by the UK courts, will take effect from December 31, 1996. BT believes that Condition 18A is ultra vires (i.e., beyond the DGT's powers). BT's court challenge relates to this vires question and not to the merits as such. The nub of the case is that Condition 18A would circumvent the statutory regime (described in the text above and immediately following). Whether or not the challenge succeeds, the DGT will continue to have all of its extensive powers to control anti-competitive behavior under the Competition Act 1980 and the Fair Trading Act 1973 as well as its existing powers under BT's Licence and its powers under the Telecommunications Act 1984 to modify (including adding to) the Conditions of BT's Licence.

Fourth, the Competition Act 1980 and the Telecommunications Act 1984 (specifically Section 50(3) thereof), as amended, confer on the DGT and DGFT concurrent powers to prevent "courses of conduct [by BT or others] which have or are intended to have or are likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of telephone apparatus or the supply or securing of telecommunications services." These wide powers allow the DGT and DGFT to refer allegedly anticompetitive BT practices to the MMC. If the MMC reports that the conduct operates against the public interest and if BT does not undertake to change the practice or does not honor such undertaking, the Secretary of State would be able to authorize an enforcement action.

Fifth, if BT were to engage in anticompetitive conduct proscribed by the European Community Treaty 123/ and that conduct had the requisite jurisdictional features (i.e., an actual or potential, direct or indirect, effect on trade between Member States in that Community), affected third parties could sue in the UK or other national courts for damages and to restrain the conduct. In addition, the European Commission could investigate the conduct, determine illegality, and impose fines (up to 10 percent of worldwide group turnover) and remedial orders,

123/ In particular, Article 85 of the Treaty prohibits agreements, decisions, and practices which have as their object or effect the prevention, restriction, or distortion of competition. Article 86 proscribes abuse of a dominant position.

subject to appeal in the EC courts. In practice, both of these routes are used frequently to enforce EC competition law.

In sum, there is an elaborate and comprehensive set of competitive safeguards to prevent BT from acting anticompetitively and to protect new US and other entrants into the UK telecommunications business from any possible BT abuse of power.

D. The United Kingdom Satisfies Every Element of the Effective Competitive Opportunities Standard for the Transfer of Control of Section 310 Licenses

The merger of MCI and BT, including the proposed indirect controlling interest by BT in radio licensee subsidiaries of MCIC, is in the public interest and, therefore, consistent with Section 310(b)(4) of the Communications Act.

Section 310(b)(4) permits a common carrier or broadcast service radio licensee to be controlled by a company with non-US ownership exceeding 25 percent unless the Commission finds that the public interest would be served by refusal or revocation of such licenses. 124/ The Commission determined in its Foreign Carrier

124/ This section provides that:

No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . (4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

[Footnote continued]

Entry Order that it would base its assessment of the public interest in Section 310(b)(4) matters on an ECO test and other relevant factors including national security, law enforcement, foreign policy and trade policy. ^{125/} In applying the ECO test, the FCC first determines the home country of the non-US investor. Then the Commission will compare any restrictions on US participation in that home market on the particular wireless services for which the foreign investor seeks to participate in the US market. "If the services in the US and the home market are not precisely matched," then the Commission will "use the most closely substitutable wireless services in the home market, as determined from the consumers' perspective." ^{126/}

The initial focus of the inquiry is on whether there are any de jure restrictions. The FCC will also consider "the practical or de facto limitations on US participation, including the price and terms of interconnection, competitive safeguards, and the regulatory framework of the relevant markets . . . to the extent

[Footnote continued]

47 U.S.C. § 310(b)(4). This provision reflects Congress' concern that during wartime, national security considerations may require limiting undue alien influence in domestic radio activities, primarily broadcasting. "The dangers of espionage and propaganda disseminated through foreign-owned radio stations in the US prior to and during war brought about the passage of [the foreign ownership provisions]." Noe v. FCC, 260 F.2d 739, 741 (D.C. Cir. 1958) (citations omitted). See also, MCI/BT 9 FCC Rcd at 3964; Millicom, Inc., 4 FCC Rcd 4846, 4847 (1989).

^{125/} Foreign Carrier Entry Order, 11 FCC Rcd at 3942-43.

^{126/} Id. at 3953.

they are relevant.” 127/ Significantly, the Commission specifically ruled that if it determines that “US interests are allowed to hold a controlling interest in a provider of the relevant service in the relevant home market, then the effective competitive opportunities test would justify placing no limit on the level of alien ownership in the US service provider, absent significant de facto barriers.” 128/

As discussed below, the UK offers effective competitive opportunities to US companies in radio services similar to those in which MCI holds US licenses. For this reason, and because the UK communications market is open to US company participation at all levels, the transaction is consistent with and furthers the objectives of US trade policy. In addition, the requested finding serves the public interest because the merger will significantly promote competition in local, national and international telecommunications markets. Finally, no issues of national security or foreign policy are raised by the proposed transaction.

1. Home Market and Service Market Definitions

By virtue of the merger, BT would acquire a controlling interest in subsidiaries of MCIC that hold common carrier radio licenses. Section 310(b)(4) and, therefore, the ECO test, govern such common carrier radio licenses. The home market of BT under the ECO test is the UK. 129/ The relevant services for

127/ Id. at 3954.

128/ Id.

129/ BT is registered under the laws of England and Wales. Its headquarters are currently in London, although the merged company will have dual headquarters in

[Footnote continued]

purposes of the ECO test are those for which MCIC controls common carrier radio licenses in the US: point-to-point microwave, fixed satellite, and air-ground radiotelephone. There are wireless services in the UK that are comparable to each of these services.

While there is no common carrier point-to-point microwave radio service in the UK per se, terrestrial microwave facilities operating in frequency bands ranging from 4-28 GHz are used in the UK for trunk networks and fixed access services, among other things. As in the US, the UK's Fixed Satellite Service ("FSS") operates in the C-band (6/4 GHz), Ku-band (14/11 GHz), and Ka-band (30/20 GHz), and is used for voice, video, and data service offerings. The UK government licenses FSS earth station facilities for operation on a variety of satellites, including Intelsat, Eutelsat, and Orion, but does not license FSS satellites. The UK's Terrestrial Flight Telephony Service ("TFTS") is a radio service in the 800 MHz band in which operators are authorized to provide radio telecommunications service for reward to subscribers in aircraft. As such, TFTS is comparable to air-ground radiotelephone service in the US.

[Footnote continued]

Washington, D.C. and London. The country in which the majority of its property is located and from which it derives the greatest sales and revenues is currently the UK.

2. The UK Has No De Jure Restrictions on Radio-Based Services

The appropriate UK licenses for comparison under the ECO test would be radio licenses issued under the Wireless Telegraphy Act 1949 for use of radio frequencies and licenses issued under the Telecommunications Act 1984 for the running of systems required to provide radio-based services. These should include all of the radio services similar to those for which MCI is licensed in the US.

The UK maintains an open market policy for the provision of point-to-point microwave, fixed satellite, and air-ground radiotelephone services, without regard to the national origin of the radio licensees (or its investors). Neither the Wireless Telegraphy Act 1949 nor the Telecommunications Act 1984 contain any UK citizenship criteria or other restrictions or prohibitions on the nationality of owners, officers, or directors of licensees. Furthermore, citizenship bears no effect on the license application and grant process. There is no discrimination against firms owned or managed by persons of non-UK nationality in the grant or renewal of radio or systems licenses. The Commission previously has held that the UK “imposes no restrictions on either foreign ownership of telecommunications service providers or foreign participation in the UK resale market, or any other sector of the UK telecommunications market.” 130/ Thus, there are no de jure restrictions on the holding of radio licenses for terrestrial microwave, air-ground radiotelephone, or fixed satellite services in the UK by US persons.

130/ ACC/Alanna, 9 FCC Rcd at 6247.

3. The UK Has No De Facto Restrictions on Radio-Based Services

The Commission indicated in its Foreign Carrier Entry Order that its analysis of whether there are de facto limitations on participation by US firms in these markets would be similar to its analysis of de facto restrictions under the Section 214 ECO test. That is, the Commission considers the price, terms, and conditions of interconnection, the presence of competitive safeguards, and the nature of the regulatory framework in the relevant markets. 131/

Under this test, there are no practical limitations on the provision of terrestrial microwave, fixed satellite, or air-ground radiotelephone service by US-based entities in the UK. The information provided in Section III.C.2.a above demonstrates that interconnection is available on fair and reasonable terms. These rights and obligations concerning interconnection are applicable and available without regard to whether the technology used is radio or cable based. The competitive safeguards described in Section III.C.4 above are an integral part of the UK regulatory regime. Their applicability and effectiveness does not depend on the particular transmission medium employed in any relevant system. Moreover, as the Commission has recognized in other contexts and as the Applicants further demonstrate above, the UK has an effective regulatory authority. The arm of the UK government empowered with the allocation of spectrum and the assignment of

131/ Foreign Carrier Entry Order, 11 FCC Rcd at 3954.

radio licenses to civilian users, the Radiocommunications Agency ("RA"), is a division of the DTI.

As in the US, the radio spectrum is recognized in the UK as a limited resource, and frequency congestion is a problem in many frequency bands. The UK government, however, also recognizes that the availability of radio spectrum is critical to the expansion of competition in the UK telecommunications markets ^{132/} and in recent years has taken steps in various frequency bands to meet demands for spectrum. Such measures have included, with respect to fixed services, moving users to less congested higher frequencies; requiring the use of more spectrally efficient technologies; and assuming the management of spectrum previously allocated to telecommunications operators on a "block" basis so as to facilitate competitor access. ^{133/} DTI is engaged in an ongoing consultation on ways to manage the radio spectrum to ensure that the spectrum scarcity does not become a barrier to the growth of radio-dependent services. ^{134/} These actions provide further evidence of the UK's commitment to competition in the provision of radio-based services.

^{132/} UK Department of Trade and Industry, Radiocommunications Agency. The Future Management of the Radio Spectrum: A Consultative Document, March 1994, at 10 ("Future Management Document").

^{133/} UK Department of Trade and Industry, Spectrum Management: Into the 21st Century, June 17, 1996, at ¶ 3.2.

^{134/} See Future Management Document. A key proposal being considered in this consultation is the use of spectrum fees as a means of promoting efficient use of the spectrum.

A substantial number of US and other foreign companies hold licenses under the Wireless Telegraphy Act. Examples of foreign investment in radio services in the UK include:

- **Terrestrial Microwave**: National Transcommunications Ltd. ("NTL") operates a nationwide broadband digital network consisting predominantly of microwave but also of fiber-optic links. NTL provides managed bandwidth services to customers such as TV, cable and telecommunications companies. Since March 1996, NTL has been wholly-owned subsidiary of the US firm International CableTel. Another US company, Millicom, also has a license to operate a broadband wireless network.
- **Local Loop**: NTL was one of 3 firms recently awarded licenses to provide local-loop voice/data (ISDN type) services using 10 GHz radio.
- **Fixed Satellite**: NTL is one of many UK and foreign-owned firms licensed to provide satellite uplinking services in the UK. PanAmSat is another such company, as is Maxat, a French company controlled by France Telecom.
- **Mobile**: The UK has two PCN operators. One-2-One is 50 percent owned by US West. Orange is 70 percent owned by Hutchison, a Hong Kong firm.

The active participation of US and other foreign companies in the UK market for radio-based services demonstrates that there are no practical limitations on participation by US companies in UK businesses that rely on these radio licenses.

IV. CONCLUSION

The proposed merger will serve the public interest by significantly promoting competition in local telephone service consistent with the Telecommunications Act of 1996 and in international services and foreign markets

in furtherance of policies adopted in the Foreign Carrier Entry Order. The merger grows out of the shared telecommunications policy goals of the US and the UK, is consistent with US goals in the WTO, and raises no national security issues. For all of these reasons, this proposed combined enterprise meets the objectives of US communications, trade and foreign policies and serves the interest of the American people.

For the reasons stated above, the Applicants respectfully request that the Commission grant the instant applications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathy Bates, a legal secretary with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 2nd day of December, 1996, a copy of the foregoing Applications and Notification was delivered by hand to the parties listed below.


Kathy Bates

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